IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 425 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.H.KADRI
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1. Whether Reporters of Local Papers may be allowed to see the judgements?

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1 to 5 : No

NAGINBHAI RAMBHAI GANDHI

Versus

SPL LAND ACQUISITION OFFICER

Appearance:
MR VJ DESAI for Petitioner
Mr.B.D. Desai, AGP, for the respondent

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 04/12/98

ORAL JUDGEMENT (Per: Kadri, J.)

1. The appellant, who is the original claimant, has filed this appeal under Section 54 of the Land Acquisition Act, 1894 ('Act' for short), read with Section 96 of the Code of Civil Procedure, challenging the judgment and award dated April 30, 1985 passed by the

learned Assistant Judge, Valsad, at Navsari, in Land Reference Case No.6 of 1980.

2. The State of Gujarat had decided to acquire the lands of the appellant situated at village Sonvadi, Taluka Gandevi, for the public purpose, namely, for the construction of houses of Halpati (Landless Labourers) Cooperative Society, Sonvadi. Notification under Section 4 of the Act was published in the Government Gazette on June 6,1968. Thereafter, notice under Section 4(1) of the Act was issued on the appellant inviting objection. After considering the objections, a report was submitted under Section 5(A)(2) of the Act. Thereafter, notification under Section 6 of the Act was published in the Government Gazette on June 19,1969. The appellant in response to the notice issued under Section 9 of the Act, lodged claim before the Land Acquisition Officer on July 10, 1969. Before the Land Acquisition Officer, the appellant had claimed total compensation of Rs.2,88,782/under different heads. The Land Acquisition Officer had, after considering the evidence led before him by the acquiring body, fixed market value of the acquired lands at the rate of Rs.110/- per Are and awarded total compensation of Rs.37,492.25 paise for the acquired land and the trees, etc.

3. The appellant was of the opinion that the compensation awarded by the Land Acquisition Officer was inadequate and, therefore, he had filed application under Section 18 of the Act before the Land Acquisition Officer. The above application was referred by the Land Acquisition Officer to the District Court, Valsad, at Navsari, which came to be numbered as Land Reference Case No. 6 of 1980. It may be stated that the appellant had challenged the acquisition of his lands by filing Civil Suit no.217 of 1969 in the court of Civil Judge (S.D.), at Valsad, and obtained an injunction against the acquisition proceedings. The said suit was ultimately dismissed and the injunction was vacated some time in the year 1980 and, thereafter, the possession of the acquired land was taken in the year 1980.

4. Before the Reference Court, the appellant had claimed compensation for the acquired lands at Rs.2,27,500 for 91 gunthas at the rate of Rs.2500/- per guntha, Rs.12,000/- for well, Rs.9,500/- for electric motor and pipeline, 15% solatium, and Rs.7,21,000/- for trees with solatium, plus Rs.4,80,000/- for the loss of income due to acquisition, totalling to Rs.14,85,939.50 paise. Before the Reference Court, the appellant examined himself at Exh.141 and produced voluminous

documentary evidence in form of accounts books maintained by him from S.Y. 2025 to S.Y. 2035 showing the income and expenditure incurred by him for fruit-bearing trees situated on the acquired land. The appellant also examined one Amratlal M. Desai at Exh.931, who had prepared a report in pursuance of the order of the Court in Civil Suit No.217 of 1969 for ascertaining the number of trees situated on the acquired land. The appellant in support of his case also examined Ravjibhai M.Patel at Exh.942, Bhupatbhai R.Naik at Exh.943 and Ranchhodji P. Naik at Exh.944.

5. On behalf of the referrer, written statement Exh.84 was filed contesting the claim application, inter alia, contending that compensation awarded by the Land Acquisition Officer is adequate and proper. It was averred that the claim of the appellant was exaggerated and out of proportion to the prevailing market value of the lands of the locality in which the acquired lands were situated. It was also claimed by the referrer that the appellant had only claimed Rs.2,87,000/- before the Land Acquisition Officer and, therefore, he cannot claim Rs.14,85,939.50 ps in view of the provisions of Section 25 of the Act. The referrer therefore prayed that, since the appellant had made highly excessive claim before the Reference Court, the application be dismissed with costs.

6. The learned Assistant Judge, Valsad at Navsari, had framed issues at Exh.24. After hearing the parties, the learned Assistant Judge came to the conclusion that the compensation awarded by the Land Acquisition Officer with regard to the lands and trees was quite adequate and the appellant had failed to prove that he was entitled to enhanced compensation as prayed for in the application. The learned Assistant Judge also held that the reference application was barred by the provisions of Section 25(1) of the Act as the amount claimed in the Court should not exceed the amount claimed before the Land Acquisition Officer. The learned Assistant Judge came to the conclusion that, as the claimant had failed to lead evidence with regard to market rate prevailing on the date of notification, the amount awarded by the Land Acquisition Officer towards compensation of the acquired lands was quite adequate and just. With regard to trees standing on the acquired land, the learned Assistant Judge, came to the conclusion that the Land Acquisition Officer on appreciation of evidence had properly assessed the value of the trees and awarded just compensation. In view of the above findings, the learned Assistant Judge dismissed the reference application filed by the

appellant, which has given rise to filing of this appeal.

7. The learned counsel for the appellant, Mr. V.J. Desai, has submitted that the Reference Court has erred in rejecting the reference application on the ground that it was barred by Section 25(1) of the Act. It is submitted that, if no evidence was led by the claimant for determination of market value of the lands by producing cogent and relevant evidence in the nature of sale deed, then the Reference Court ought to have determined market price of the acquired lands on the basis of 'yield method' or 'yearly income' derived from the fruit bearing trees. It is further submitted by the learned counsel for the appellant that the appellant had produced voluminous documentary evidence in the nature of accounts books which clearly showed that he was getting income of Rs.12,000/- per year from the yield of fruit bearing trees and the Reference Court has seriously erred in ignoring the books of account which were maintained in the regular course of business. It is stressed that the Reference Court has erred in giving direction that the amount of 5% be deducted from the total compensation awarded to the appellant, as the lands were 'new tenure lands'. It is also claimed by the learned counsel for the appellant that the Reference Court ought to have awarded solatium at the enhanced rate of 30% and interest at the rate of 9% for the first year and for subsequent years at the rate of 15% till realisation of the awarded amount. The learned counsel for the appellant has further submitted that, in view of the evidence on record, the claim of the appellant was just and proper and the appeal be allowed by awarding compensation of Rs.14,85,939.50 paise for the acquired land, trees, etc.

8. The learned Assistant Government Pleader, Mr. B.D. Desai, has submitted that the appellant had failed to produce documentary evidence in the nature of sale deed for determination of market value of the acquired lands and, therefore, the Reference Court was justified in rejecting the claim of the appellant for enhanced compensation for the acquired lands. It is further submitted by the learned counsel for the Government that the Reference Court had awarded just and proper compensation for the trees, which were standing on the acquired land while fixing the price of trees as per the government formula. It is further submitted by the learned counsel for the Government that the accounts books which were produced by the appellant were for the subsequent years and, therefore, no reliance can be placed on those accounts books and the Reference Court was quite justified in ignoring the accounts books

produced by the appellant and, therefore, no interference is called for of this Court and the appeal be dismissed.

9. The submission of the learned counsel for the appellant that the Reference Court has erred in rejecting the Reference Application filed by the appellant on the ground that it is barred by the provisions of Section 25(1) of the Act, deserves to be accepted. Section 25 of the Act as it stood before amended Section reads as under:

"25. Rules as to amount of compensation.- (1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11.
(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the court shall in no case exceed the amount awarded by the Collector.
(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the court shall not be less than, and may exceed, the amount awarded by the Collector."

Section 25 has been substituted for the old Section 25 by the Land Acquisition (Amendment) Act, 1984, which is as under:

"25. The amount of compensation awarded by Court not to be lower than the amount awarded by the Collector.The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11."

Section 25 as it now stands is simple and lays down that the amount of compensation awardable by court shall in no case be less than what was awarded by the Collector under Section 11. The object of the old section was to hold the claimant to a bargain and as such the claimant was to file a statement of claim on receipt of notice from the Collector under Section 9 of the Act. In that statement the claimant was to claim a definite amount. The court at any rate sitting in reference under Section 18 could not give an amount higher than what had been claimed. This provision which was purely an adjective or procedural provision has been omitted. Since the alteration of law relates to a procedural provision, it

operates retrospectively and all pending cases would be governed by the new Section 25. Retrospective effect cannot be given to a statute so as to impair an existing right or obligation other than as regards matters of procedure. (See: 1979(1) SCC p.596: Mohammad Rashid Ahmad vs. State of U.P.). But, no person can have any vested right in procedure. Procedural laws are always retrospective in the sense that these provisions will apply to proceedings already commenced on the date of its enforcement. (See:1986 (2) GLR p.1364: Sharadchandra Chimanlal & Others vs. State of Gujarat and others). The Parliament did not expressly exclude applicability of amended Section 25 to the pending proceedings or appeal, but clearly removed the fetters in the Principal Act on the power of the Court intended to render justice or undo injustice to the owner of the land unhedged by procedural wrangle. Therefore, we are of the opinoin that the Amended Act will apply to the reference which was pending before the trial court and, hence, the reference was not barred by Section 25 of the Act. In view of the amended Section 25 of the Act, a claimant can claim enhanced compensation and his claim need not be restricted to the claim which was claimed before the Land Acquisition Officer. This amended provision, as per the decision of this Court in the case of Sharadchandra Chimanlal & Others vs. State of Gujarat and others, reported in 1986 (2) GLR 1363, would apply to the pending proceedings also. Therefore, we are of the opinion that, in view of the principles laid down in the case of Sharadchandra Chimanlal (supra), the Reference Court has erred in rejecting the Reference Application of the appellant as barred by the provisions of Section 25(1) of the Act. Therefore, the finding of the Reference Court deserves to be set aside.

10. It is settled legal principle that an award of the Land Acquisition Officer is merely an offer and it is not a judgment. Whatever is stated in the award cannot be evidence. Nor can it be used in judgment in reference under Section 18 of theAct as evidence. The Reference Court, while determining the market price of the acquired lands, had relied upon the sale instances, which were considered by the Land Acquisition Officer for determination of market value of the acquired lands in his award. The approach of the Reference Court is contrary to the settled principles as propounded by the Apex Court in a catena of decisions. If the claimants had not led any evidence in the nature of sale deed for determination of market value of the acquired lands, then, the Reference Court ought to have determined the market price of the acquired lands on the basis of 'yield

method'. The Reference Court was not sitting in appeal over the award made by the Land Acquisition officer. Determination of market value of the acquired land at Rs.350/- per Are by the Reference Court is against the principle of law. If the claimant had not led any evidence in the nature of sale deeds for determination of market value of the acquired lands, then the Reference Court ought to have taken resort to 'yield method' for determination of compensation for the acquired lands.

11. The claimant, in his oral evidence, has stated about number of fruit-bearing trees standing on the acquired land. He had explained that, in the year 1968, there was heavy flood and some of the accounts books were destroyed due to flood. However, the claimant had produced accounts books before the Reference Court from S.Y.2025 to S.Y. 2035 at Exh.59 to Exh.69. In our opinion, the explanation offered by the claimant with regard to destruction of accounts books due to flood in the year 1968 is quite plausible.

12. From cross examination of claimant's witnesses also, it is borne out that there was heavy flood in the year 1968 and severe damage was caused to the surrounding lands and the houses. It is an admitted position that the acquired lands are situated near River "Ambika". Therefore, we are of the opinion that the explanation offered by the appellant that due to floods in River "Ambika" in the year 1968, the accounts books maintained by the claimant prior to the year 1968 were destroyed, is quite plausible. During the course of hearing of this appeal, the learned counsel for the appellant produced a statement showing the income of the appellant from the fruit bearing trees from S.Y. 2025 to S.Y. 2035 after deducting the expenses. This statement was prepared on the strength of relevant entries in the account books maintained in regular course of business produced by the appellant at Exh.59 to Exh.69.The statement produced by the learned counsel for the appellant, which is not disputed by the learned counsel for the Government, shows that the appellant had received income of fruit bearing trees for the period from S.Y.2025 to S.Y.2035, which is corresponding to the years from 1968 to 1978, in the sum of Rs.1,94,600.98 paise. The expenses incurred by the appellant for the above period were Rs.39,766.86 paise. The net income during the above period comes to Rs.1,54,834.12 paise. This net income was for 12 years and, if it is divided by 12, yearly income would come to Rs.12,902, i.e, nearly Rs.13,000/- per year.

13. In a fruit garden there are initial and recurrent expenses, which an owner must incur to secure a continuous income from the plantation in addition to the every day items, such as weeding, watering, manuring, guarding fruit, collecting, marketing and so on. Given the land it must be cleaned and prepared, wells must be dug or other provision for watering made, the plants provided and planted, implements carts, oxen or bullocks and so on bought. The interest on this capital will for a deduction from the gross receipts. It must reasonably be taken at from 10 to 12.1/2% of the cost for all except wells and buildings, which later may be taken at 7%. The average life and age of the tree is required to be known as the period of future bearing is fundamental to the calculations. A knowledge of the number of trees that can be usually planted to the acre is important, for with this information it is possible to value the vacant land as a potential fruit farm, and to rebut claims based on statements, that excessive incomes can be secured on the assumption, that a large number of trees can be planted than is an economic possibility. In offering compensation for fruit bearing trees, the Court has to bear in mind all the imponderables and uncertainties with regard to yield derived from the fruit-bearing trees. Therefore, in our opinion, bearing in mind the above principles to ascertain the net income of the fruit bearing trees standing on the acquired land, 40% deduction will have to be made in the yearly income of Rs.13,000/- shown in the statement. After deduction of 40%, in our view, the appellant must be getting yearly income of Rs.7800/- from the fruit bearing trees. The next question which arises for our consideration is as to what multiplier should be adopted to the yearly income derived from the fruit bearing trees by the appellants. The Apex Court in the case of State of Harynana vs. Gurcharan Singh, reported in AIR 1996 Supreme Court 106, while deciding the question with regard to multiplier to be adopted while determining the compensation for agricultural land and trees, has ruled that in no circumstances the multiplier of more than 8 years can be applied to the land with fruit bearing trees. Applying the principles laid down by the Apex Court in the case of Gurcharan Singh (supra), in our opinion, in the facts and circumstances of the present case, it would be just and adequate to adopt multiplier of eight, and, applying eight multiplier, total income derived from the yield of fruit bearing trees would be Rs.7800/- per year x 8 = Rs.62,400.00.

14. The submission of the learned counsel for the

appellant that the Reference Court has erred in deducting 5% as government share, as the acquired lands were 'new tenure lands' and deduction of 5% from the compensation awarded to the claimants, is erroneous, also deserves merit. The Apex Court in the case of State of Maharashtra vs. Babu Govind Gavate, reported in AIR 1996 Supreme Court 904, held as under:

"Section 43 of the Bombay Act was enacted to protect the right, title and interest of the tenant who purchased the property, and became owner thereof with a view to see that he is not deprived of his ownership, right to possession and enjoyment thereof as a tiller of the soil to perpectuate the object of the Tenancy Act. Under its scheme previous sanction is is a condition precedent for any transfer. But that, under no circumstances, gives power to the Government, when it acquires the land exercising the power of eminent domain to deduct any amount from the compensation payable to the owner of the land as determined under Section 23(1) of the Act. The sanction required under Section 43 is only when there is a bilateral valid agreement between the owner and a third party purchaser or a lessee or a mortgagee etc. as envisaged under Section 43(1). But when the State exercises its power of eminent domain and compulsorily acquires the land, the question of sanction under Section 43 does not arise.
Moreover, the condition to grant sanction is not hedged with any right to the Government to deduct 1/3 when it exercises its power of eminent domain for a public purpose."

Therefore, in view of the above principles of the Apex Court, the direction of the Reference Court with regard to deduction of 5%, i.e., Rs.582/- from the amount of compensation also deserves to be set aside.

15. In our opinion, in view of the Amended Act, 1984, the claimant is entitled to enhanced solatium at the rate of 30% on the amount of compensation as per the provisions of Section 23(2) of theAct. We are supported by the decision of the Apex Court inthe case of Union of India and others vs. Filip Tiago De Gama of Vedem Vasco De Gama, reported in (1990) 1 Supreme Court Cases 277, wherein, the Apex Court has ruled that amended Section 23(2) applies also to cases where acquisition proceedings commenced before April 30, 1982 but award is made byCollector or reference Court after September 24,1984. In view of the above principle laid down by the Apex Court, the claimant is entitled to solatium at the rate of 30% on the amount of compensation and the award of

Reference Court deserves to be modified to that extent. Similarly, the claimant is also entitled to interest at the rate of 9% per annum for the first year and for the subsequent year at 15% till the amount is realised.

16. As a result of foregoing discussion, we determine the market value of the acquired lands of the appellant at Rs.62,400/-. The appellant will, therefore, be entitled to compensation for the acquired lands at Rs.62,400/- less the compensation already awarded by the Land Acquisition Officer. The appellant is also entitled to 30% solatium and enhanced rate of interest as per the provisions of Section 28 of the Act (as amended). The finding of the Reference Court to the effect that the Reference Application of the appellant is barred by the provisions of Section 25(1) of the Act is set aside.

17. In the result, the appeal is partly allowed with no order as to costs. Decree be drawn in terms of this judgment.

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(swamy)